

Interface Between Competition Law and Personal Data: Challenges and Possibilities

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Outline

- Role of (personal) data in competition: contras and pros
- Role of (personal) data in competition law practice
- Central challenges:
 - Deeper understanding of data (related) markets
 - Collision of economic and non-economic values

Personal data in competition: contras

- Problems:
 - Great volumes, variety and velocity of accumulation of data
- Theories of harm:
 - Harm to consumers due to degradation of quality of products, (loss of privacy) and discouraging innovation
 - Barriers to entry due restrictions on data availability
 - Reduction/ loss of effective competition due to pre-emptive mergers and restrictions of access to data

Personal data in competition: pros

- Advantages:
 - Great volumes, variety and velocity of accumulation of data
- Key asset and input for various companies
- Ubiquitous availability of data from different sources
- Low purchasing price and low cost of analytics
- Different value of different data (real-time data and real-time analytics v historical data) for different businesses

Role of personal data in competition?

- Valuable data = processed (analysed) data
 - Algorithm possibly more valuable than data
 - Processed data => individualised results = more valuable than raw data
 - For the optimisation of own business – limited value of data from third sources
- Value of data differs depending on the company's business

Main lessons from practice (1)

- Incomplete understanding of data markets
 - Recognition that data is traded, but no attempts to define a data market
 - Mixing data, data analytics services, incl. creation of databases, and other derivative services

Main lessons from practice (2)

- Personal data and privacy – not a competition law matter
 - Protection of personal data and privacy by other legal rules; competition law is not an appropriate instrument
 - Failure to consider whether privacy and data protection constitute a non-price element of competition

Open questions for practice and research (1)

- Deeper understanding of data markets
 - Can there be a data market? - Yes, consider markets for raw materials and other inputs, also when these were not offered for sale.
 - Data collection may in fact be data trading!
 - Differentiation of business models relevant to (personal) data: data collection, data analytics, management decision services, wholesale of data, obtaining data from users etc.
 - What do we talk about when we talk about (personal) data: raw data or processed data? What role data analytics play?

Open questions for practice and research (2)

- Discussion about data protection and competition law = reincarnation of the debates on the relationship between competition law and other policies
 - Socio-political factors in the application of competition law
 - Balancing of economic and non-economic objectives => case law shows that public interest objectives can be taken into account

Thank you very much for your attention!